IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 5288 of 2004(D)

AGAINST THE ORDER IN IA.1035/02,1034/02RCP.38/01 IN RCP.39/2001 of RENT CONTROLLER OF TIRUR
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PETITIONER:

M.HAMZA,
S/O.CHEKKU,
MUNDATHOTTU HOUSE,
TIPRANGODE POYILLISSERI,
TIRUR TALUK (MALAPPURAM DISTRICT)

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN

RESPONDENTS:
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1. ABDUL NAZAR,
S/O.ABOOBACKER,
POOKKAYIL HOUSE,
THALAKKAD, TIRUR (MALAPPURAM DISTRICT)

2. M.P.AYYAPPANKUTTY CHETTIAR,
MEPPURATHU PUTHAN VEETTIL HOUSE,
THALAKKAD,
TIRUR TALUK (MALAPPURAM DISTRICT)

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF THE ORDER IN I.A.1035/02 IN RCP 39/01 DTD.22.1.04 OF RENT CONTROL COURT, TIRUR.

EXT.P2 TRUE COPY OF ORDER IN I.A.1034/02 IN RCP 38/01 DTD.22.1.04 OF RENT CONTROL COURT, TIRUR.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 5288 OF 2004

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Dated this the 19th day of June, 2007.

J U D G M E N T

This writ petition is filed seeking to quash the orders passed in I.A.1034/02 in RCP 38/01 and I.A.1035/02 IN RCP 39/01. Both these rent control petitions were filed by the landlord for eviction of the tenants namely Abdul Nazar and Ayyappankutty Chettiar. I.A.1035/02 is filed in RCP 39/01 by Abdul Nazar who is the respondent in the other CRP to implead him as a party for a proper disposal of the case. According to the landlord Ayyappankutty Chettiar is the tenant of the property and there is a sublease in favour of Abdul Nazar and there are other grounds other than arrears of rent etc. and so the tenant Ayyappankutty Chettiar is liable to be evicted under the provisions of the Rent Control Act.

2. On the other hand, the petitioner who has sought himself to be impleaded as a party would contend that Ayyappankutty Chettiar was only a former tenant but he is

the real tenant of the property and therefore his junction is absolutely necessary for a proper disposal of the case. The court below found that his junction is necessary and also ordered joint trial of RCPs.38 and 39/01. It is those orders that are under challenge here.

3. In a rent control petition it is a sine qua non that in order to get an eviction the landlord has to prove that the respondent therein is the tenant and there are grounds as enunciated under Section 11 of the Kerala Buildings(Lease and Rent Control) Act for eviction. I am informed by the learned counsel that Ayyappankutty Chettiar has raised a contention that he is not the tenant of the property and the person who is sought to be impleaded is the tenant. When the landlord fails to prove that Ayyappankutty Chettiar is the tenant of the property, then naturally these petitions may have to be dismissed. Therefore, in order to adjudicate whether Ayyappankutty Chettiar is a tenant of the property and continuous to be the tenant of the property the junction of the other petitioner is not necessary. Everything depends

upon the proof adduced by the landlord to get eviction under the Act. Therefore, I find the impleadment of Abdul Nazar is not necessary at this stage in RCP 39/01. When it is so there is no necessity for a joint trial of RCPs.38 and 39/01. So, both the orders under challenge are liable to be set aside and I do so. But, I make it very clear that at any point of time if the Court feels that there is a collusion between landlord and Ayyappankutty Chettiar, the Court can suo motu implead this Abdul Nazar for a proper determination of the case. With these findings, the writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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